

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

FILED
2010 JUN 23 AM 10 29

BY TRICK E. DUFFY, CLERK
DEPUTY CLERK

CURTIS SULLIVAN,

Plaintiff,

vs.

DR. GIANELLI and
THERESA SCHNEE,

Defendants.

Cause No. CV-10-00035-GF-SEH-RKS

RECOMMENDATION AND ORDER

Pending is Plaintiff Curtis Sullivan's Motion to Proceed in Forma Pauperis and civil complaint submitted pursuant to 42 U.S.C. § 1983. Mr. Sullivan alleges violations of his Eighth Amendment right to prompt and adequate medical care while he was incarcerated at Crossroads Correctional Center.

Mr. Sullivan is subject to the three strikes rule of 28 U.S.C. § 1915(g) which provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while

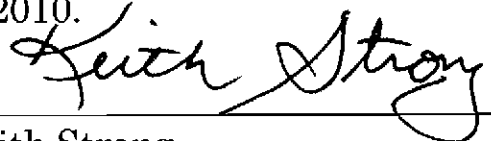
incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Mr. Sullivan has been issued strikes pursuant to 28 U.S.C. § 1915(g) for failure to state a claim in the following three cases: Civil Action Nos. 09-CV-39-GF-SEH-RKS (§ 1983 filed May 14, 2009; closed August 3, 2009); 08-CV-22-H-DWM-RKS (§ 1983 filed March 27, 2008; closed May 1, 2008); and 09-CV-06-H-DWM-RKS (§ 1983 filed March 2, 2009; closed May 20, 2009). Therefore, Mr. Sullivan falls squarely within the three-strikes provision of 28 U.S.C. § 1915(g) and he may not proceed in forma pauperis unless he is in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Mr. Sullivan cannot show that the behavior giving rise to his claims puts him in imminent danger of serious physical injury since he is suing medical personnel at Crossroads Correctional Center where he was previously incarcerated. Currently, Mr. Sullivan is incarcerated at Montana State Prison. Therefore, he cannot demonstrate imminent danger of serious physical injury regarding the claims at issue.

Accordingly, the Court **RECOMMENDS** the following Order be issued by Judge Haddon.

DATED this 23rd day of June, 2010.



Keith Strong
United States Magistrate Judge

Based upon the above Recommendation by Judge Strong, the Court issues the following:

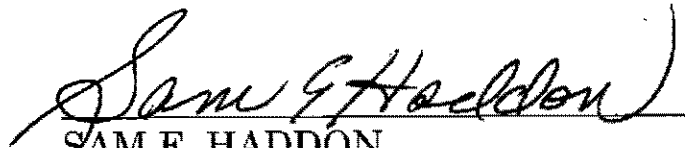
ORDER

1. Mr. Sullivan's Motion to Proceed in Forma Pauperis¹ is **DENIED** pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to terminate all pending motions and close the case.
3. No motions for reconsideration or rehearing will be entertained and the Clerk of Court is directed to discard any such motions.
4. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. No reasonable

¹Document 1.

person could suppose an appeal of this decision would have merit.

DATED this 23rd day of June, 2010.


SAM E. HADDON
United States District Judge